

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: Plymouth Oil Company, LLC Merrill, Iowa Wastewater Facility No. 6-75-00-1-20	ADMINISTRATIVE ORDER NO. 2013-WW-03
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TO: David P. Hoffman, Manager
Plymouth Oil Company, LLC
22058 County Road K-42
Merrill, IA 51038

I. SUMMARY

This administrative order (order) is issued to David P. Hoffman, Manager, Plymouth Oil Company, LLC (Plymouth Oil). The Iowa Department of Natural Resources (Department) issues this order due to failure to timely submit wastewater monthly operation reports (MORs). This order requires the timely submittal of MORs with all required information to Department Field Office No. 3 (FO 3).

Any questions or response regarding this order should be directed to:

Relating to technical requirements:

Bryon Whiting, Environmental Specialist
IDNR Field Office No. 3
1900 N. Grand
Gateway North, Suite W17
Spencer, Iowa 51301-2200
Ph: 712/262-4177

Relating to legal requirements:

Diana Hansen, Attorney at Law
Legal Services Bureau
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Plymouth Oil operates an oil extraction plant near Merrill, Iowa. The plant's primary products include food grade corn oil, food grade gluten-free flour, and defatted corn germ meal used in animal feed. The wastewater generated at this facility includes cooling tower blowdown, boiler blowdown, water softener regeneration, and non-contact cooling water from the air compressors. There is no treatment prior to discharge.

Oil is removed from this waste stream by a skimmer and disposed of by Darling International. The restroom waste from this facility is handled by an on-site septic system.

2. Wastewater from the wastewater treatment facility (WWTF) for Plymouth Oil is discharged to an unnamed tributary to the west branch of the Floyd River, pursuant to Iowa NPDES Permit No. 6-75-00-1-20. The NPDES permit was originally issued on March 16, 2009 for this WWTF and was amended on January 7, 2010. The permit expires on March 15, 2014. The NPDES permit contains effluent limitations for the discharge of pollutants including chlorine, total residual; iron, total (as FE); temperature and pH. The NPDES permit requires that MORs be sent on a monthly basis by the 15th day following the close of the reporting period.

3. An August 5, 2009 memo to the file by Neil Cook, FO 3 indicates that he spoke with Kim Sitzmann, Product Manager at Plymouth Oil, regarding the status of plant submission of MORs. Ms. Sitzmann reported that Plymouth Oil was still under construction and that she would submit the missing MORs for the months of March through July 2009. Mr. Cook again sent an electronic MOR form to Ms. Sitzmann, which had been previously sent to Dave Hoffman, Manager of Plymouth Oil on March 27, 2009 and again on May 1, 2009.

4. On January 7, 2010, Iowa NPDES Permit No. 6-75-00-1-20 was issued and sent by certified mail to the facility. The amendment became effective on February 1, 2010. The amendment involved a dosing limit for a new chemical additive and limits and monitoring for total residual chlorine. Sheila Kenny, FO 3, sent an email with an amended electronic MOR form on January 29, 2010 that included the new monitoring requirements.

5. On October 18, 2011, a wastewater facility inspection report prepared by Sheila Kenny, FO 3, stated that only six of twenty-nine MORs had been submitted on time. The report referenced the rule for submitting MORs within 15 days of the end of the reporting period. The summary section of the inspection report stated that all MORs must be submitted within 15 days after the end of the month.

6. On March 22, 2011, FO 3 sent a notice of violation (NOV) letter due to failure to submit January and February 2011 MORs. The rule for submitting MORs within 15 days of the end of the reporting period was cited in that notice.

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7. On May 23, 2011, FO 3 sent an NOV letter for failure to submit the April 2011 MOR. The rule for submitting MORs within 15 days of the end of the reporting period was cited in that notice.

8. On June 23, 2011, FO 3 sent an NOV letter for failure to submit the May 2011 MOR. The rule for submitting MORs within 15 days of the end of the reporting period was cited in that notice.

9. On January 5, 2012, FO3 received an e-mail message from Ms. Sitzmann which included the past due November 2011 MOR.

10. On April 3, 2012, FO 3 sent an NOV letter for failure to submit the February 2012 MOR. The rule for submitting MORs within 15 days of the end of the reporting period was cited in that letter. The letter also advised that Plymouth Oil was being referred to the Department's legal section for possible formal enforcement action which could include monetary penalty.

11. Plymouth Oil filed for Chapter 11 Bankruptcy on July 23, 2012.

12. On September 5, 2012, FO 3 received an incomplete and tardy MOR for July 2012 to FO 3. The MOR was sent as an email attachment by Plymouth Oil on September 5, 2012. The MOR was required to be submitted by August 15, 2012. The NPDES permit requires this facility to conduct total residual chlorine testing three times per week. The July 2012 MOR indicated that this testing was conducted only three times during July 2012. May and June 2012 MORs were submitted timely.

13. Plymouth Oil did not submit the August 2012 MOR timely to FO 3. FO 3 sent this facility an NOV letter on September 27, 2012. The August 2012 MOR was required to be submitted by September 15, 2012.

14. Plymouth Oil failed to submit the September 2012 MOR timely. FO 3 issued an NOV letter to Plymouth Oil for this reporting violation on October 26, 2012.

15. Plymouth Oil failed to submit its December 2012 MOR to FO 3 timely. On December 29, 2013, Plymouth Oil was issued an NOV letter for this reporting violation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part:

If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

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2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. Although this facility has a current NPDES permit, there have been numerous violations of the permit requirement concerning submittal of MORs on a timely basis.

3. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department. This rule provides as follows:

567—63.7 (455B) Submission of records of operation. Except as provided in subrules 63.3(4) and 63.5(1), records of operation shall be submitted to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit. The permittee shall report all instances of noncompliance not reported under 63.12(455B) at the time monitoring reports are submitted. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. NOV letters issued as a result of inspections and review of monitoring data for Plymouth Oil establish violations of the monitoring and reporting requirements for this facility in regards to submittals of MORs to FO 3. These violations have been outlined in this order in Section III. Statement of Facts.

V. ORDER

THEREFORE, the Department orders Plymouth Oil to comply with the following provisions to cease, abate and redress violations:

1. You are required to comply with the monitoring and reporting requirements of the NPDES permit issued for Plymouth Oil. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 3.

2. No administrative penalty is assessed at this time since Plymouth Oil has filed for bankruptcy.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order without an administrative penalty in view of the bankruptcy filing by Plymouth Oil.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp Dated this 7th day of
CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES February, 2013

Plymouth Oil Company, LLC- Wastewater Facility No. 6-75-00-1-20 (Copy to Central Office Wastewater File), Bryon Whiting- Field Office No. 3, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.a.

Copy to: Kim Sitzmann, Product Manager, Plymouth Oil Company, LLC
22058 County Road K-42, Merrill, IA 51038

